

LATHAM & WATKINS LLP  
 Sadik Huseny (Bar No. 224659)  
 sadik.huseny@lw.com  
 Steven M. Bauer (Bar No. 135067)  
 steven.bauer@lw.com  
 Amit Makker (Bar No. 280747)  
 amit.makker@lw.com  
 Shannon D. Lankenau (Bar No. 294263)  
 shannon.lankenau@lw.com  
 505 Montgomery Street, Suite 2000  
 San Francisco, CA 94111  
 Telephone: 415.391.0600  
 Facsimile: 415.395.8095

LATHAM & WATKINS LLP  
 Melissa Arbus Sherry (*pro hac vice*)  
 melissa.sherry@lw.com  
 Richard P. Bress (*pro hac vice*)  
 rick.bress@lw.com  
 Anne W. Robinson (*pro hac vice*)  
 anne.robinson@lw.com  
 Tyce R. Walters (*pro hac vice*)  
 tyce.walters@lw.com  
 Gemma Donofrio (*pro hac vice*)  
 gemma.donofrio@lw.com  
 Christine C. Smith (*pro hac vice*)  
 christine.smith@lw.com  
 555 Eleventh Street NW, Suite 1000  
 Washington, D.C. 20004  
 Telephone: 202.637.2200  
 Facsimile: 202.637.2201

LAWYERS' COMMITTEE FOR  
 CIVIL RIGHTS UNDER LAW  
 Kristen Clarke (*pro hac vice*)  
 kclarke@lawyerscommittee.org  
 Jon M. Greenbaum (Bar No. 166733)  
 jgreenbaum@lawyerscommittee.org  
 Ezra D. Rosenberg (*pro hac vice*)  
 erosenberg@lawyerscommittee.org  
 Ajay P. Saini (*pro hac vice*)  
 asaini@lawyerscommittee.org  
 Maryum Jordan (Bar No. 325447)  
 mjordan@lawyerscommittee.org  
 Pooja Chaudhuri (Bar No. 314847)  
 pchaudhuri@lawyerscommittee.org  
 1500 K Street NW, Suite 900  
 Washington, D.C. 20005  
 Telephone: 202.662.8600  
 Facsimile: 202.783.0857

*Additional counsel and representation  
 information listed in signature block*

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' STATEMENT RE:  
 PRIVILEGE LOGS**

Date: TBD  
 Time: TBD  
 Place: Courtroom 8  
 Judge: Hon. Lucy H. Koh

1 Because Defendants have not provided a privilege log regarding their December 14  
 2 production, Plaintiffs submit the following Statement Re: Privilege Logs to respectfully propose an  
 3 additional round of briefing for privilege disputes to ensure that the Court and the parties are not  
 4 hit with the entirety of the privilege disputes on December 23, 2020.

5 Pursuant to the Court's Amended Order Denying Motion for Reconsideration and  
 6 Clarifying Order to Compel ("December 13 Order") (Dkt. 380), the parties filed a Joint Statement  
 7 Re: Privilege Log and Privilege Disputes ("Joint Statement") (Dkt. 382). In the Joint Statement,  
 8 Defendants represented to the Court that they would provide a privilege log relating to documents  
 9 in the December 14, 2020 production. Joint Statement at 2 ("**December 14, 2020**: Defendants  
 10 provide their first privilege log, accompanying their production of over 60,000  
 11 documents"). Subsequently, the Court referenced the "December 14 privilege log" in its  
 12 December 15 Procedures For In Camera Review of Documents on Privilege Logs ("Order on  
 13 Privilege Procedures") (Dkt. 383). Order on Privilege Procedures at 2. Presumably, the Court  
 14 believed a privilege log had been provided (based on Defendants' representation). Plaintiffs  
 15 likewise understood the Court's Order on Privilege Procedures to indicate that the Magistrate  
 16 Judge Panel expected Defendants to produce a December 14 privilege log that would capture any  
 17 documents withheld from the December 14 production of over 60,000 documents.

18 The only privilege log provided to Plaintiffs to date, with respect to their productions in  
 19 response to Plaintiffs' November 17, 2020 Requests for Production, corresponds to Defendants'  
 20 earlier, December 8, 2020 production of 516 documents. That privilege log references a total of 42  
 21 withheld documents ("December 8 privilege log"), and has now been definitively resolved between  
 22 the parties with Defendants producing 40 of the documents and continuing to withhold 2.<sup>1</sup> When  
 23 Plaintiffs asked Defendants whether they had produced a December 14 privilege log, Defendants

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24  
 25 <sup>1</sup> In accordance with the Order on Privilege Procedures, Plaintiffs provided Defendants with a list of  
 26 challenged entries in Defendants' December 8 privilege log on December 16, 2020 prior to 3:00 p.m. P.M.  
 27 Plaintiffs and Defendants then met and conferred on December 16, 2020 prior to 7:00 p.m. P.M., and were  
 28 able to come to agreement regarding the privilege disputes. As a result, Plaintiffs understand that neither  
 Plaintiffs nor Defendants will be filing briefing requiring a decision by the Magistrate Judge Panel regarding  
 redacted or withheld documents from the December 8 privilege log.

acknowledged that they did not yet produce privilege log corresponding to the December 14 production; to date, no such privilege log has been provided.

According to the prior Declaration of Brian DiGiacomo (“DiGiacomo Declaration”) (Dkt. 376-2), of the approximately 88,765 documents ordered “to be produced to Plaintiffs by December 14, 2020,” Defendants intended to withhold approximately 25,512 documents on the basis of privilege. DiGiacomo Declaration at 1-2. However, the December 8, 2020 privilege log contains merely 42 redacted or withheld documents. Exhibit A. Accordingly, Plaintiffs expect to receive a single privilege log from Defendants covering over 25,000 withheld documents—and perhaps containing many thousands of entries—on December 21, 2020 at 7:00 p.m. PT, in addition to additional log entries corresponding to Defendants’ productions from December 14 through December 21, 2020. To comply with the Court’s Order on Privilege Procedures, Plaintiffs would then be required to review all of these privilege log entries in 20 hours, and provide a list of all challenged objections to Defendants by December 22, 2020 at 3:00 p.m. PT. More significantly, the Magistrate Judge Panel would then be presented with briefing regarding objections to a subset of potentially thousands of privilege log documents on December 23, 2020, and would have to adjudicate this massive volume of privilege disputes in one fell swoop. This is infeasible, and places an enormous burden on both the Magistrate Judge Panel.

To ease the burden on the Magistrate Judge Panel and the parties, Plaintiffs respectfully propose that the Court order a modified privilege log schedule that adds the following:

- **December 17, 2020 by 5:00 p.m. PT:** Defendants produce a privilege log to Plaintiffs containing all documents redacted or withheld from the December 14, December 16, and December 17, 2020 productions.
- **December 18, 2020 by 10:00 a.m. PT:** Plaintiffs provide Defendants with a list of challenged entries.
- **December 18, 2020 by 12:00 p.m. PT:** Plaintiffs and Defendants meet and confer on privilege disputes.
- **December 19, 2020 by 12:00 a.m. PT:** Plaintiffs and Defendants filed simultaneous briefs on unresolved privilege disputes.

Plaintiffs propose that the privilege dispute process outlined in the Court's Order on Privilege Procedures, calling for Defendants to produce a privilege log by December 21 at 7:00 p.m. PT, continue largely as planned. In this way, Defendants' December 21 privilege log would contain any documents redacted or withheld from Defendants' December 18, December 19, December 20, and December 21 productions, and the parties would meet and confer, and submit briefing on these documents. Accordingly, the Magistrate Judge Panel would receive two, more manageable batches of privilege disputes, on December 19 and December 23 respectively, and Plaintiffs would not be required to work through tens of thousands of privilege log entries in less than two days, an impossible task.

For the aforementioned reasons, and in light of Defendants' failure to produce a December 14 privilege log thus far, Plaintiffs respectfully seek an order from the Court modifying the privilege log dispute process as outlined above. Plaintiffs raised this issue with Defendants yesterday during a meet and confer, and presented this proposal to Defendants this morning. Plaintiffs shared a draft of this filing and sought to have a joint filing between the parties. Defendants were unable to provide a position or their ascent before this filing.

Dated: December 17, 2020

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny  
Sadik Huseny

Sadik Huseny (Bar No. 224659)  
sadik.huseny@lw.com  
Steven M. Bauer (Bar No. 135067)  
steven.bauer@lw.com  
Amit Makker (Bar No. 280747)  
amit.makker@lw.com  
Shannon D. Lankenau (Bar. No. 294263)  
shannon.lankenau@lw.com  
**LATHAM & WATKINS LLP**  
505 Montgomery Street, Suite 2000  
San Francisco, CA 94111  
Telephone: 415.391.0600  
Facsimile: 415.395.8095

Melissa Arbus Sherry (*pro hac vice*)  
melissa.sherry@lw.com  
Richard P. Bress (*pro hac vice*)  
rick.bress@lw.com

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Anne W. Robinson (*pro hac vice*)  
anne.robinson@lw.com  
Tyce R. Walters (*pro hac vice*)  
tyce.walters@lw.com  
Gemma Donofrio (*pro hac vice*)  
gemma.donofrio@lw.com  
Christine C. Smith (*pro hac vice*)  
christine.smith@lw.com  
**LATHAM & WATKINS LLP**  
555 Eleventh Street NW, Suite 1000  
Washington, D.C. 20004  
Telephone: 202.637.2200  
Facsimile: 202.637.2201

*Attorneys for Plaintiffs National Urban League;  
League of Women Voters; Black Alliance for  
Just Immigration; Harris County, Texas; King  
County, Washington; City of San Jose,  
California; Rodney Ellis; Adrian Garcia; and  
the NAACP*

Dated: December 17, 2020

By: /s/ Jon M. Greenbaum  
Kristen Clarke (*pro hac vice*)  
kclarke@lawyerscommittee.org  
Jon M. Greenbaum (Bar No. 166733)  
jgreenbaum@lawyerscommittee.org  
Ezra D. Rosenberg (*pro hac vice*)  
erosenberg@lawyerscommittee.org  
Ajay Saini (*pro hac vice*)  
asaini@lawyerscommittee.org  
Maryum Jordan (Bar No. 325447)  
mjordan@lawyerscommittee.org  
Pooja Chaudhuri (Bar No. 314847)  
pchaudhuri@lawyerscommittee.org  
**LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW**  
1500 K Street NW, Suite 900  
Washington, DC 20005  
Telephone: 202.662.8600  
Facsimile: 202.783.0857

*Attorneys for Plaintiffs National Urban League;  
City of San Jose, California; Harris County,  
Texas; League of Women Voters; King County,  
Washington; Black Alliance for Just  
Immigration; Rodney Ellis; Adrian Garcia; the  
NAACP; and Navajo Nation*

Wendy R. Weiser (*pro hac vice*)  
weiserw@brennan.law.nyu.edu  
Thomas P. Wolf (*pro hac vice*)  
wolft@brennan.law.nyu.edu  
Kelly M. Percival (*pro hac vice*)

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percivalk@brennan.law.nyu.edu  
**BRENNAN CENTER FOR JUSTICE**  
120 Broadway, Suite 1750  
New York, NY 10271  
Telephone: 646.292.8310  
Facsimile: 212.463.7308

*Attorneys for Plaintiffs National Urban League;  
City of San Jose, California; Harris County,  
Texas; League of Women Voters; King County,  
Washington; Black Alliance for Just  
Immigration; Rodney Ellis; Adrian Garcia; the  
NAACP; and Navajo Nation*

Mark Rosenbaum (Bar No. 59940)  
mrosenbaum@publiccounsel.org  
**PUBLIC COUNSEL**  
610 South Ardmore Avenue  
Los Angeles, California 90005  
Telephone: 213.385.2977  
Facsimile: 213.385.9089

*Attorneys for Plaintiff City of San Jose*

Doreen McPaul, Attorney General  
dmcpaul@nndoj.org  
Jason Searle (*pro hac vice*)  
jasearle@nndoj.org  
**NAVAJO NATION DEPARTMENT OF  
JUSTICE**  
P.O. Box 2010  
Window Rock, AZ 86515  
Telephone: (928) 871-6345

*Attorneys for Navajo Nation*

Dated: December 17, 2020

By: /s/ Danielle Goldstein  
Michael N. Feuer (Bar No. 111529)  
mike.feuer@lacity.org  
Kathleen Kenealy (Bar No. 212289)  
kathleen.kenealy@lacity.org  
Danielle Goldstein (Bar No. 257486)  
danielle.goldstein@lacity.org  
Michael Dundas (Bar No. 226930)  
mike.dundas@lacity.org  
**CITY ATTORNEY FOR THE CITY OF  
LOS ANGELES**  
200 N. Main Street, 8th Floor  
Los Angeles, CA 90012  
Telephone: 213.473.3231  
Facsimile: 213.978.8312

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3 Dated: December 17, 2020  
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*Attorneys for Plaintiff City of Los Angeles*

By: /s/ Michael Mutalipassi  
Christopher A. Callihan (Bar No. 203010)  
legalwebmail@ci.salinas.ca.us  
Michael Mutalipassi (Bar No. 274858)  
michaelmu@ci.salinas.ca.us  
**CITY OF SALINAS**  
200 Lincoln Avenue  
Salinas, CA 93901  
Telephone: 831.758.7256  
Facsimile: 831.758.7257

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*Attorneys for Plaintiff City of Salinas*

By: /s/ Rafey S. Balabanian  
Rafey S. Balabanian (Bar No. 315962)  
rbalabanian@edelson.com  
Lily E. Hough (Bar No. 315277)  
lhough@edelson.com  
**EDELSON P.C.**  
123 Townsend Street, Suite 100  
San Francisco, CA 94107  
Telephone: 415.212.9300  
Facsimile: 415.373.9435

Rebecca Hirsch (*pro hac vice*)  
rebecca.hirsch2@cityofchicago.org  
**CORPORATION COUNSEL FOR THE  
CITY OF CHICAGO**  
Mark A. Flessner  
Stephen J. Kane  
121 N. LaSalle Street, Room 600  
Chicago, IL 60602  
Telephone: (312) 744-8143  
Facsimile: (312) 744-5185

*Attorneys for Plaintiff City of Chicago*

1  
2 Dated: December 17, 2020

By: /s/ Donald R. Pongrace  
Donald R. Pongrace (*pro hac vice*)  
dpongace@akingump.com  
Merrill C. Godfrey (Bar No. 200437)  
mgodfrey@akingump.com  
**AKIN GUMP STRAUSS HAUER & FELD  
LLP**  
2001 K St., N.W.  
Washington, D.C. 20006  
Telephone: (202) 887-4000  
Facsimile: 202-887-4288

*Attorneys for Plaintiff Gila River Indian  
Community*

9  
10 Dated: December 17, 2020

By: /s/ David I. Holtzman  
David I. Holtzman (Bar No. 299287)  
David.Holtzman@hkllaw.com  
**HOLLAND & KNIGHT LLP**  
Daniel P. Kappes  
Jacqueline N. Harvey  
50 California Street, 28th Floor  
San Francisco, CA 94111  
Telephone: (415) 743-6970  
Fax: (415) 743-6910

*Attorneys for Plaintiff County of Los Angeles*

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19  
20  
21 **ATTESTATION**

22 I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this  
23 document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred  
24 in this filing.

25 Dated: December 17, 2020

**LATHAM & WATKINS LLP**

26  
27 By: /s/ Sadik Huseny  
Sadik Huseny  
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